STATE OF MAINE
PUBLIC UTILITIES COMMISSION

2000-180

June 16, 2000

BANGOR HYDRO-ELECTRIC COMPANY
Request for approval of a Special Rate Contract with Lincoln Pulp and Paper Company, Inc.

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

We approve an amendment to the Power Sales Agreement (PSA) between Bangor Hydro-Electric Company (BHE) and Lincoln Pulp & Paper Company, Inc. (Lincoln). The amendment determines the proper price for T&D service by unbundling the price of generation that Lincoln has diligently obtained from a competitive electricity provider, Enron Energy Services, Inc. (Enron). We also approve a stipulation agreed to by BHE, Lincoln and the Office of the Public Advocate, pertaining to the special contract unbundling and a deposit that Lincoln must pay to Enron for generation service.

II. BACKGROUND

BHE and Lincoln are parties to a PSA dated December 31, 1996 for the provision of electric service for a minimum of a 5-year term. Effective March 1, 2000, BHE no longer may provide generation service as it was contractually obligated to do in the PSA. See generally 35-A M.R.S.A. § 3201-3217. BHE attempted to renegotiate and reform the Lincoln PSA to unbundle the generation price from the T&D price, as required by 35-A M.R.S.A. § 3204(10). By letter received at the Commission on April 13, 2000, counsel for BHE stated that BHE and Lincoln had been unable to reach an agreement and asked the Commission to resolve the dispute pursuant to 35-A M.R.S.A. § 3204(10).

As of March 1, 2000, Lincoln obtained generation service from Enron through the Maine Electric Consumer Cooperative (MECC) aggregation group. Lincoln and BHE agree that, at this time, standard offer service is the only viable alternative for Lincoln to obtain generation. Furthermore, the parties agree that the generation service obtained from Enron is less expensive than standard offer service.

A dispute arose between Lincoln and BHE about Lincoln's generation cost after Enron exercised its contractual right to demand a deposit from Lincoln. In Lincoln's view, the PSA obligated BHE to provide the deposit. BHE disputes that the utility is responsible for the deposit but agrees that the cost of providing the deposit should be included as a cost of generation service. Moreover, BHE asserts that Enron generation service remains the diligent choice for Lincoln for purposes of calculating Lincoln's T&D

service. Lincoln contends that regardless of which entity is responsible for the deposit, Lincoln would have difficulty in providing the deposit in the amount and by the time required by Enron. Lincoln disagrees that Enron is Lincoln's diligent generation option if the deposit requirement forces Lincoln back to the standard offer.

BHE bills Lincoln for Enron's generation service. Lincoln pays BHE for both the generation and T&D service, and BHE then transmits the generation portion of the payment to Enron. Lincoln paid BHE's bill that was due in May, including an amount for generation due Enron, and $150,000 that was due BHE for T&D.[1] Lincoln's bill due by the end of June will similarly be for generation service due Enron and $150,000 due BHE for T&D.

On June 12, 2000, BHE, Lincoln and the Office of the Public Advocate (OPA) filed a stipulation with the Commission. The parties agree that BHE will transmit the entire amount of the May and June payments to Enron. The additional $300,000 sent to Enron will serve as part of the deposit due Enron for Lincoln's generation service. Lincoln will pay Enron for the remainder of the deposit in a timely manner.

To allocate payments between competitive electricity providers (CEP) and the T&D utility in the manner required by the stipulation, BHE requires a waiver of Chapter 322, section 6(C).[2] The parties therefore recommend such a waiver. Notwithstanding the fact that BHE will permit the two $150,000 payments to be allocated to Enron ahead of Lincoln's T&D obligations, Lincoln acknowledges that it remains subject to the consequences described in the PSA if Lincoln's past due amount owed BHE exceeds $600,000. The parties also agree that Lincoln will be responsible for late payment fees on the amount paid by BHE to Enron that otherwise would have been used to pay for T&D service.

The stipulating parties also recommend that the amendment to the PSA between Lincoln and BHE, whereby BHE agrees that Lincoln exercised due diligence by acquiring generation service from Enron through the MECC, be approved by the Commission pursuant to 35-A M.R.S.A. § 703(3-A). To calculate the price of "unbundled" T&D service provided by BHE to Lincoln, the parties agree that Lincoln's cost of generation should not include any cost associated with the deposit required by Enron.

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[1] That T&D bill was evidently not disputed because the deposit controversy had not yet developed when the bill was issued.

[2] Section 6(C) provides the method to allocate *partial payments*. Literally, section 6(C) would not apply to Lincoln's bills due in May and June, because Lincoln has paid or will pay the total as stated on the bills. We view the stipulation as the parties' agreement that Lincoln's bills due in May and June also include a bill for $150,000 each month as part of Enron's deposit. In that way, Lincoln's May and June payments will be partial for the total Enron generation and deposit bill plus the T&D service bill.

The parties also agree that if Lincoln changes generation service before or after March 1, 2001, the parties will again have to determine whether Lincoln exercised due diligence in terminating the current service from Enron and obtaining new generation service.

III. DECISION

The parties agree that, ignoring any effect of the deposit requirement, the Enron generation price represents a significant savings compared to standard offer service for Lincoln. The stipulation permits us to calculate the Enron generation cost without regard for the deposit, meaning the T&D contribution by Lincoln is significantly greater than the contribution from Lincoln would be if the price of standard offer service were used to determine the T&D rate. Because the Lincoln contract unbundling is subject to reconciliation by the stipulation in Phase II of BHE's initial T&D rate case (Docket No. 97-596), this significant savings will be passed on to ratepayers.

We agree that Lincoln exercised due diligence in obtaining generation service from Enron through the MECC aggregation. The MECC aggregation and the standard offer were the only two viable generation options available to Lincoln. However, continued unbundling of the Lincoln-BHE PSA using the Enron-Lincoln generation contract has been complicated by the deposit request by Enron. Lincoln claims that the PSA requires BHE to provide the deposit. BHE disagrees. Lincoln also claims that it simply cannot pay Enron the deposit in a timely manner. There seems to be general consensus that, unless the deposit is provided to Enron in a timely manner, the generation contract between Lincoln and Enron may be terminated. At the present time, only standard offer service would be available to Lincoln. There is disagreement whether Lincoln should be found to have exercised due diligence if the Enron contract is terminated and Lincoln reverts to the standard offer. The parties therefore reached a compromise that works to avoid the termination of the Enron contract. If the generation contract is terminated, either Lincoln or ratepayers will lose the benefit of the significant savings that Enron offers over the standard offer.

Facing this dilemma, we agree that the parties' stipulation results in a reasonable resolution of this matter. Upon review, we agree that Enron has a sufficiently colorable argument to support its demand that Lincoln provide a deposit for generation service by the end of June that we would not require Lincoln to contest that demand as a condition of approving the stipulation. We do not address Lincoln's claim, however, that pursuant to the PSA, BHE should be responsible for the deposit to Enron. Instead, we find that Lincoln will be unable to provide the entire amount of the deposit, at least in a timely manner. In making this finding, we rely on an affidavit provided by Joseph H. Torras, Chairman of the Board of Lincoln. Unless the deposit is provided in a timely manner, it is likely that Enron will terminate the generation contract with Lincoln, and the parties would be left to decide whether Lincoln's return to the standard offer was diligent or Lincoln would be left to dispute Enron's contract termination, or both.

We agree with the parties that a better approach is for Lincoln to maintain the benefits from the Enron-Lincoln contract, and ensure that ratepayers receive those generation cost savings. In reliance on Mr. Torras's affidavit, we find that Lincoln must receive some assistance from BHE if Enron is to receive the deposit in time for Lincoln to avoid a contractual dispute with Enron, which may result in termination of the contract.

In the context of this case and the Lincoln-BHE PSA, we can allow BHE to forego its right to allocate customer payments to T&D service in the first instance. If Enron billed Lincoln directly rather relying on BHE for billing, Lincoln could reach the same result as is intended by the stipulation without BHE's consent or an order from this Commission. Because BHE bills for Enron, we must waive our rule (chapter 322, section 6(C)) that would require BHE to credit payments first to the T&D utility. Such a waiver is reasonable because ratepayers are assured of receiving the unbundled contract benefits. Moreover, the PSA and our rules provide other protection to BHE and ratepayers that all T&D arrearage owed by Lincoln will be paid.

In the stipulation, the parties require an accounting order for BHE if the $300,000 advanced to Enron becomes uncollectible, presumably because BHE agrees to forego its right to be paid before the competitive electricity provider. Because ratepayers will benefit, whereas shareholders will not benefit, from avoidance of the generation contract termination, we agree that it is fair that ratepayers bear the risk that the $300,000 becomes an uncollectible. Therefore, we will permit BHE to defer the $300,000 if it becomes uncollectible. We require, and interpret the stipulation to likewise require, that BHE engage in all reasonable collection efforts before concluding that the $300,000 is uncollectible.

Accordingly, we

O R D E R

1. That the Power Sales Agreement as amended by "Amendment No 2 to Power Sales Agreement," dated June 9, 2000, is approved pursuant to 35-A M.R.S.A. § 703;

2. That the Power Sales Agreement will be unbundled for T&D service to Lincoln Pulp and Paper Company, Inc. as described in this Order;

3. That the stipulation filed on June 12, 2000 and attached to this Order is approved;

4. That, to permit BHE to carry out its obligations in the stipulation, we waive chapter 322, section 6(C) as to the May and June payments by Lincoln to Bangor Hydro-Electric Company;

5. That in the event that Lincoln does not pay Bangor Hydro-Electric Company for the $300,000 advanced by Bangor Hydro Electric Company to Enron for Lincoln's deposit, after reasonable collection efforts by Bangor Hydro-Electric, BHE may account for the debt as an uncollectible and defer the uncollectible on its books, with carrying charges.

Dated at Augusta, Maine, this 16th day of June, 2000.

BY ORDER OF THE COMMISSION

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Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
Nugent
Diamond

THIS DOCUMENT HAS BEEN DESIGNATED FOR PUBLICATION

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320(1)-(4) and the Maine Rules of Civil Procedure, Rule 73, et seq.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320(5).

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.